Supreme Court, U.S.
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No. 021792

In The

Supreme Court of the United States

CARL E. JONES, KATHRYN L. JONES,
LARRY TREADWAY, KASSIE TREADWAY,
DAVID C. JONES, SYLVIA J. JONES,
JERRY PURCELL, MARGIE PURCELL,

Petitioners,

v.

BUFFALO TOWNSHIP,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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12 pp

QUESTIONS PRESENTED

1. TO QUALIFY FOR AN INTERIM TRAIL USE UNDER THE NATIONAL TRAILS SYSTEMS ACT, 16 U.S.C. § 1247(d), SUSPENDING ABANDONMENT OF A RAILROAD RIGHT OF WAY AND STOPPING REVERSION OR EXTINGUISHMENT OF THE RIGHT OF WAY EASEMENT, IS IT NECESSARY TO COMPLY WITH THE RULES AND REGULATIONS SET FORTH IN 49 C.F.R. § 1152.29? OR IS IT SUFFICIENT NOT TO FILE THE REQUIRED APPLICATION, NOT TO APPEAR BEFORE THE ICC, NOT TO PARTICIPATE IN HEARINGS, BUT TO UNILATERALLY PLEDGE TO CARRY OUT THE OBJECTIVES AND THE INTENT OF THE NATIONAL TRAILS SYSTEMS ACT?

2. WHERE THERE IS NO PRECEDENT ON THE INTERPRETATION AND APPLICATION, OF A FEDERAL STATUTE AND REGULATIONS BETWEEN A STATE'S SUPREME COURT DECISION AND ITS JUDGMENT ON REQUEST FOR REARGUMENT, AND THE COURT OF APPEALS FOR THAT CIRCUIT ENTERS A JUDGMENT WITH A CONTRA OPINION AND INTERPRETATION OF THE SAME FEDERAL STATUTES AND REGULATIONS AND THERE IS FILED WITH THE STATE COURT THE OPINION OF THE FEDERAL CIRCUIT COURT TO DIRECT THE STATE COURT'S ATTENTION TO THIS CONFLICT THIRTY DAYS BEFORE THE FINAL STATE ORDER, IS THE STATE COURT ORDER IN VIOLATION OF THE SUPREMACY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES, ARTICLE VI, CLAUSE 2, AND INVALID?

QUESTIONS PRESENTED – Continued

3. IN OBTAINING OR APPLYING FOR AN INTERIM TRAIL USE TO THE ICC OR STB, IS IT NECESSARY TO COMPLY WITH THE JURISDICTIONAL TIME LIMITS ESTABLISHED FOR TAKING ACTION ON THE APPLICATION?

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners respectfully request that a Writ of Certiorari be issued to review the Judgment and Opinion and findings of fact of the Supreme Court of Pennsylvania in this case.

OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania is reported at 813 A.2d 659. The Order of the Pennsylvania Supreme Court denying Rehearing is not reported, other than in the notes of the A.2d reporter. The Opinion of the Court of Appeals for the Third Circuit is reported at 319 F.2d 595. The Opinion of the Commonwealth Court of Pennsylvania is reported at 778 A.2d 1269. The Opinion of the Court of Common Pleas of Butler County is not reported.

JURISDICTION

The Supreme Court of Pennsylvania entered its judgment on Reargument denied March 11, 2003. 813 A.2d 659 (App. infra, 57a)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

The Regional Rail Reorganization Act of 1973, 45 U.S.C. § 748(c), provides that Conrail may abandon an unprofitable right of way by filing a notice of insufficient revenues, wait at least 90 days then file an application for abandonment. 45 U.S.C. § 748(c). The express language requires the ICC to grant the application unless an offer of financial assistance has been received, and the ICC recognized that it may delay abandonment under the interim trail provisions of the National Trails Systems Act, 16 U.S.C. § 1247(d), administered under 49 C.F.R. § 1152.29.

The National Trails Systems Act, was amended to provide in Section 8(d), 16 U.S.C.A. § 1247(d), that the Interstate Commerce Commission [now Surface Transportation Board], "in administering the Railroad Revitalization and Regulatory Reform Act of 1976," 45 U.S.C.A. §§ 801, et seq., authorizes the establishment of "trails ***using* the provisions of such programs**." 16 U.S.C.A. § 1247(d) (Emphasis supplied.)

The Act further provided that:

> "in the case of interim use [for trial purposes] of any established railroad-right-of-way . . . such interim use shall not be treated, for the purpose of any law or rule of law, as an abandonment of such rights of way for railroad purposes."

The Code of Federal Regulations 49 C.F.R. § 1152.29, governing the creation of "interim trail use and railbanking" provides as follows:

"§ 1152.29 **Prospective use of rights of way for interim trail use and railbanking**.

"(a) **If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and railbanking pursuant to 16 U.S.C. § 1247(d), it *must* file a comment or otherwise include a request in its filing (*in a regulated abandonment proceeding*) or a petition (in an exemption proceeding) indicating it would like to do so**. . . . .

"(b)(1)

"(i.) **In every proceeding where a Trails Act request is made, *the Board will determine whether the Trails Act is applicable***. 49 C.F.R. § 1152.29 (Emphasis supplied)

The supremacy clause of the U.S. Constitution provides:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all of the Treaties made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Art. VI, cl.2, Constitution of the United States.

STATEMENT OF THE CASE

In the 1860s the Western Pennsylvania Railroad Company under the power of eminent domain obtained a railroad right of way easement across properties, now owned by the Petitioners. The Butler Branch ultimately came under the ownership of Conrail, which later applied

to the ICC for authority to abandon the line under the Railroad Revitalization and Regulatory Reform Act. The ICC issued an abandonment order and no interim trail use permit was issued. The rails were sold and removed. The abandonment has been consummated, and the railroad right of way has been extinguished. The National Trails Systems Act has not been complied with, and the extension of the easement not effectuated. It is necessary to comply with 49 C.F.R. § 1152.29 to gain the benefits, through an administrative process.

The United States Court of Appeals for the Third Circuit has held that it is necessary to comply with 49 C.F.R. § 1152.29 for an interim trial use to be authorized. This is binding on the State Courts in Pennsylvania under the Supremacy Clause.

The Pennsylvania Rail to Trail Act, and the National Trails Systems Act were not complied with and cannot be used as a factual basis for a finding of fact in an Equity case, as stated in each of the Pennsylvania cases opinions, so no Court may be bound by the trial court's determination of fact that there was no intent to abandon.

The issue of the need to comply with 49 C.F.R. § 1152.29 was preserved in each opinion in the State Courts.

REASONS FOR GRANTING THE PETITION

I. THE SUPREME COURT OF PENNSYLVANIA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL AND STATE LAW IN A WAY THAT CONFLICTS WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT, THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND OTHER COURTS OF APPEALS, AND VIOLATED THE SUPREMACY CLAUSE OF THE CONSTITUTION.

II. THE SUPREME COURT OF PENNSYLVANIA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

III. THE SUPREME COURT OF PENNSYLVANIA HAS MISCONSTRUED, MISINTERPRETED, AND MISAPPLIED THE NATIONAL TRAILS SYSTEMS ACT AND THE RULES AND REGULATIONS ISSUED THEREUNDER TO AUTHORIZE THE CREATION OF TRAILS WITHOUT COMPLIANCE WITH THE ACT AND THE RULES.

IV. THE SUPREME COURT OF PENNSYLVANIA HAS VIOLATED THE SUPREMACY CLAUSE IN INTERPRETING THE NATIONAL TRAILS SYSTEMS ACT AND DISREGARDING THE RULES AND REGULATIONS ESTABLISHED IN RELATION THERETO.

V. THE SUPREME COURT OF PENNSYLVANIA HAS OMITTED, OR MISSTATED IN THE OPINION, A MATERIAL FACT WHICH CONTRIBUTED TO THE FINDINGS OF THE LOWER COURT IN ITS FINDING OF FACT AND OPINION.

CONCLUSION

This Honorable Court should hold that the provisions of the National Trails Systems Act 16 U.S.C. § 1247(d), extending the expiration of rights of ways under Interim Trail Use, may only be actuated in compliance with 49 C.F.R. § 1152.29.

Further, that in the present cases before this Court, the easements of right of ways have been extinguished.

Respectfully submitted,

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